

A MANAGER'S GUIDE TO A

Reduction in Work Force

IN MONTANA STATE GOVERNMENT

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Introduction

This document provides guidance to agency human resource professionals and managers charged with carrying out a reduction in force (RIF). We discuss planning, implementation, and reemployment following a RIF.

A reduction in force is a management decision resulting in the layoff of a permanent employee, also referred to as downsizing. It is not a disciplinary action. There are many reasons for a reduction. A partial list includes:

- elimination of programs;
- reduction in the number of allowable positions (FTEs);
- lack of work;
- lack of funds;
- expiration of grants; or
- reorganization.

Most executive branch agencies are required to provide affected permanent employees with certain benefits. Explanation of these benefits may be found in the following:

- Reduction in Work Force Policy, MOM Policy 3-0155;
- State Employee Protection Act (section 2-18-1201 et seq., MCA);
- Veterans' Preference, ARM 2.21.3601 et seq.;
- Recruitment and Selection Policy, ARM 2.21.3701 et seq.;
- Broadband Pay Plan Policy, MOM Policy 3-05-1;
- Grievance Policy ARM 2.21.8010 et seq.;
- Agency policy; and
- Applicable collective bargaining agreements.



The policies are located on our web site at <http://www.mom.mt.gov/default.mcp> and individual collective bargaining agreements at <http://laborrelations.mt.gov/laboragreements.mcp>.

You can find the State Employee Protection Act at

http://data.opi.mt.gov/bills/mca_toc/2_18_12.htm

Review and consider all the sources listed above when planning and implementing a reduction in force, as requirements vary. For example:

- Typically, employees who have not completed their probation, temporary employees, and short-term workers are not entitled to reduction in force benefits.
- The reduction in force policy does not apply to employees of the Montana University System.
- Layoffs and reinstatement are mandatory subjects of collective bargaining. Most collective bargaining agreements contain specific provisions addressing lay-off and recall that may exceed the requirements of the reduction in force policy and the State Employee Protection Act.
- Some collective bargaining agreements limit reduction-in-force conditions.

Strategically Planning a Reduction in Force

First Things First

Before you undertake a reduction in force, consult human resources and legal staff. Downsizing often results in litigation. Employees have multiple avenues to challenge methods, practices and outcomes. You can take steps early in the decision-making process to help alleviate anxiety and mitigate challenges. For example:

- Broadly document the reason for the reduction in force.
 - What was the business purpose?
 - How does it support your mission, vision, goals, and objectives?
 - What are the goals of the reduction?
 - What will it accomplish?
 - What are your operating principals?
- Examine other options. Document the results. For example:
 - What options did you consider?
 - Why did you reject some options?
 - What options did you implement?
 - How are your services affected?

Once you have answered the above questions and reached a decision to reduce your workforce, consider these additional questions:

- How will you make and document decisions regarding programs, staff and positions to retain, those to change, and those to eliminate?
- Will the reduction in force be limited to a particular portion of your organization, a work unit, section, bureau, division, or a specific geographic location?
- What are your timeframes?
 - Will you layoff everyone at the same time?
 - When will you notify employees?
 - When will you notify the job registry coordinator?
 - Do you need to notify the bargaining agent (if applicable)?
- How will you notify employees about their rights?
- Know your profile.
 - What does your current workforce look like?
 - What will the workforce look like after the reduction?
- How many employees will be displaced?
- What are the costs?
- Can you undertake a voluntary reduction first?
- What resources are needed to plan, implement, and monitor the reduction?
- What will your communication plan be during planning, implementation, and after?
- Will there be challenges to manage (i.e. staff moral and re-training) related to the reduction?



Documenting the reasons for your decisions you make are critical during a reduction.

Other Options

Unless the legislature or governor orders a reduction in force, you may consider several other options (after consulting with the bargaining agent, if appropriate):

- temporarily or permanently reduce working hours;
- approve short-term leaves of absence without pay (less than 15 working days); and
- identify positions for elimination and transfer qualified employees to other vacant agency positions.

In reviewing each option, please consider how periods of leave without pay may affect the employee's benefits. The Montana Code Annotated 2-18-601 defines continuous employment as "working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days." Periods of leave without pay greater than 15 days will result in a break of continuous employment. Breaks in continuous employment can affect and employee's benefits in the following two ways:

- Lengthen the period of time an employee must wait before reaching eligibility to taking sick or annual leave.
- An employee does not accrue sick or annual leave credits while in a leave without pay status.

Furloughs

Work furloughs are involuntary time off without pay to reduce personal services expenditures. You may implement furloughs in some type of "across-the-board" manner, applying to whole work units.

Reducing work hours in the unionized workplace can be more complex. Collective bargaining agreements may impose additional requirements. You must include a unit-by-unit, contract-by-contract analysis of how to furlough bargaining unit employees. Communication early and often between managers, human resources, and labor relations staff in planning for such reductions is necessary.

Voluntary Reductions

In some situations, employees may be willing to volunteer to work reduced hours to avoid a reduction in force. If you offer this option to employees and they agree, this voluntary decision is not a furlough.

Transfers to Vacant Positions

You may transfer non-union employees identified for reduction in force to another vacant non-union position within the agency. You should treat employees accepting a transfer as “not affected by” a reduction in force, even when the transfer is a demotion. The employee may be entitled to pay protection under the State Employee Protection Act, but is not usually eligible for other benefits provided to a laid-off employee.

Choosing Between Reduced Hours and Furloughs

If you choose to reduce work hours, through a furlough or voluntary reduction of hours, neither the reduction-in-force policy nor the State Employees Protection Act provides benefits. The employee is a part-time worker and may be eligible for unemployment insurance. The following changes in benefits may occur:

- Leave accrual will be prorated based on the hours they work.
- Holiday pay may be affected.
- Agencies will continue to pay the state share of an employee’s health insurance premiums, provided the employee works at least 20 hours per week.
- Depending on when the time off is taken and how many hours are involved, retirement benefits for employees may also be affected.



Contact the Office of Labor Relations, State Human Resources Division, to determine your agency’s bargaining obligations.

Skill Assessment

The reduction-in-force policy requires you to consider the programs that will continue and the staff structure that best achieves program objectives. It contains guidelines to help you determine which employee(s) to layoff.

First, consider skill. The policy sets out several factors that the agency should consider in assessing the employee's skills. If employees possess equivalent skills, length of continuous service in state government is the deciding factor. The definition of continuous employment at 2-18-601(4), MCA shall be used to determine length of service.

Consideration in a Union Environment

Collective bargaining agreements may modify the policy requirements. Areas of state policy or statute typically modified by collective bargaining agreements are:

- seniority as a consideration in selecting employees for layoff;
- advance notice requirements in a layoff situation; and
- recall.

A careful review of the seniority, reduction-in-force, and recall provisions of the contract is vital to selecting employees for layoff. Watch for "strict," "relative," "modified," or other "seniority" language.

A **strict seniority** provision gives preference to the employee with the longest service without regard to any other considerations. An example of strict seniority layoff language is:

"Layoffs caused by reduction in force shall be in order of seniority within the classification in which employed; that is, the employee last hired shall be the first released."

A **modified seniority** layoff provision serves the basic aims of seniority, while recognizing other factors such as capabilities or qualifications. There are three basic categories of modified seniority provisions. They are the "relative ability" clause, the "hybrid" clause, and the "sufficient ability" clause.

A **relative ability** seniority clause requires that you retain a senior employee over a junior employee, if the senior employee possesses fitness and ability equal to that of junior employees. Several Bargaining agreements in state government have this kind of language. An example is:

"If qualifications and capabilities are substantially equal, then seniority shall be the determining factor in the selection of employees for layoff within the same job classification."

A “**hybrid**” seniority clause requires consideration and comparison of both seniority and relative ability. An example is:

“Qualifications, seniority and capabilities shall be the controlling factors in selection of employees for layoff among positions of the same grade and class by geographic location, as identified in the supplemental agreements.”

Unless the contract specifically says so, this does not mean that each of the three considerations (qualifications, seniority, and capabilities) be weighted equally. Arbitrators require fair and reasonable consideration be given to seniority and the relative ability factors.

A **sufficient ability** seniority clause provides, in general, preference for the senior employee, if he or she possesses sufficient ability to perform the job. Minimum qualifications are enough to give the senior employee retention preference. This clause is similar to a strict seniority clause in that a senior employee (assuming the senior employee is minimally qualified) is entitled to retention preference over a junior employee with greater abilities and qualifications. The sufficient ability clause is rare in state government agreements.

Veterans Preference

There is an additional preference for a United States citizen who is a veteran, a disabled veteran, or an eligible relative during a reduction in force. In section 39-29-111, MCA, the law provides that a public employer shall retain in a position, over all others, a veteran, a disabled veteran, or an eligible relative who meets specific criteria. You must retain a disabled veteran, with a service-connected disability of 30 percent or more, over other veterans, disabled veterans, and eligible relatives.



The veterans preference in retention does not apply to a position covered by a collective bargaining agreement.

It is the responsibility of the employee to claim preference in retention. An employee who claims veterans preference in retention must document eligibility in the same manner required in ARM 2.21.3616.

Cost Considerations

Reduction in force can be costly. The costs can include:

- up to six months of the state share for health insurance for each laid-off employee;
- the expense of cashing out leave balances;
- the cost of purchasing years of retirement service credit for employees who choose the retirement option;
- retraining benefits for each laid off employee; (An agency must pay the Department of Labor and Industry an amount equal to the department's average cost of providing retraining and development services in the previous fiscal year.), and
- relocation expenses for eligible employees.

In some instances, the legislature may provide funds to cover expenses. At other times, you may use the unexpended balance in any specific appropriation from the previous fiscal year.

Implementing the Plan

You must complete a few steps as you proceed to implement the plan for layoffs. We have outlined those in this section.

Notice of Lay Off

Employees subject to a reduction must receive adequate notice. The effective layoff date is the date determined to be the end of employment for the employee. If you are reducing 25 or more employees, you are required by statute to provide notice at least 60 calendar days prior to the anticipated date of layoff. If you are reducing less than 25 employees, you shall provide notice at least 14 days prior to the anticipated date of layoff. Whenever possible, you should deliver the written notice in person. You may send the notice by certified mail if you cannot meet in person with the affected employee. You can find a sample letter used to provide notice with the Reduction in Force Policy located at <http://www.mom.mt.gov/default.mcp.x>. If applicable, you shall also provide notice to the employee's collective bargaining agent.

The following information should be included in the notice:

- official notice, including the effective date of layoff;
- information about grievance rights;
- copy of the State Employee Protection Act ;
- retirement service purchase rights; and
- the applicable collective bargaining agreement.

These statutory notice requirements represent the minimum notice to affected employees and unions. Individual collective bargaining agreements might require more advance notice, or require the employer's and employees' bargaining representatives meet before implementing any layoffs. When timelines and benefits are not identical, the conditions most beneficial to the employee prevail.

Job Registry

An employee who is laid off is entitled to be included in a special job registry for two years from the employee's lay-off date or the employee's completion of job training, whichever is later. Therefore, at the same time you notify employees of the lay-off, you must notify the job registry. You must complete an "Agency Notification of Layoff for Job Registry Participation" for each employee. If laid-off employees choose the benefits of the State Employee Protection Act, they should receive a copy of the "Job Registry Participant Letter" and must fill out a "Job Registry Participant Information Form." They must also complete an electronic "State Application" and send both to the job registry.



You can find these forms with the Reduction in Workforce Policy at the State Human Resources Division web site, <http://www.mom.mt.gov/default.mcp.x>.

Grievance Rights

Laid-off, non-union, permanent employees may file a grievance under Grievances, (ARM 2.21.8010 et seq.). The Grievance Policy defines a grievance as, "a complaint or dispute initiated by an employee regarding the application or interpretation of written laws, rules, personnel policies or procedures, which adversely affects the employee, unless specifically prohibited from doing so by statute or rule".

A collective bargaining agreement, statute, or the agency may establish a separate grievance procedure. The Department of Administration authorizes departments to adopt internal grievance

procedures consistent with the Grievance Policy, (ARM 2.21.8010 et seq.). This adds additional steps, includes forms, and modifies timeframes at the agency's discretion.

If your agency has adopted a grievance procedure, non-union employees will file under that procedure. Employees covered by a collective bargaining agreement must follow the provisions outlined in the collective bargaining agreement. Grievance procedures contained in the collective bargaining agreement take precedence over both the Grievance Policy, (ARM 2.21.8010 et seq.) and your agency's grievance procedures.

If your agency fails to provide this information to a non-union employee in a timely manner, the laid-off employee is not required to follow the grievance procedures. They may proceed directly to court with any complaint. Employees and agencies covered by a collective bargaining agreement must use the procedures in the contract.



Information regarding the grievance procedure must be provided to the employee no later than seven days after the effective date of the layoff.

Reemployment

Agency managers shall offer reinstatement to the laid off employee if the same position or a position in the same occupation in the employing agency becomes available within one year of the employee's layoff date.

An employee reemployed in a different position in any state agency under the broadband pay plan is entitled to the same hourly wage or salary if reemployed in the same occupation and pay band or higher. If an agency offers less than previously earned, an employee may choose to accept the offer and/or remain on the job registry.

A collective bargaining agreement governs the blue-collar pay plan. The State Employee Protection Act does not have an impact on setting salary in this plan.

Longevity, Sick, and Annual Leave

You should administer sick and annual leave according to the reduction in force (MOM 3-0155) and recruitment and selection (ARM 2.21.8010 et seq.) policies as well as state statute. Longevity

is administered as provided for in the MOM recruitment and selection policy and applicable state statute (Section 2-18-304, MCA).

Relocation Expenses

If you rehire a laid-off employee and require a move to another geographic location, certain funds for the move may be available from the employing agency, according to its policy, or the state's dislocated worker program. Employees can get applications and information specific to individual circumstances from the employing agency or any local Job Service Workforce Center.

Retirement Service Purchase Option

If a laid-off employee is eligible for normal or early retirement in the defined benefit retirement plans, and is eligible to purchase additional one-for-five service, he or she may elect to receive additional service as provided for in section 19-2-706, MCA. The employee will receive this service in lieu of other benefits provided for in the State Employee Protection Act and must waive all State Employee Protection Act benefits in writing.

Under this option, the agency is required to pay **a portion** of the total cost of up to three years of additional retirement service the employee is qualified to purchase under section 19-3-513, et seq., MCA. The cost of each year of service is equal to the total actuarial cost of purchasing the service. The employee may elect to pay the difference between the agency's contribution and the total actuarial cost. If the employee does not pay the difference, the employee can use your contribution to purchase less than the total years of service they are eligible to purchase.

Restrictions apply if the employee returns to work for another state agency or the university system. The employee forfeits the additional service benefit if they return for 960 hours or more in a calendar year in a position covered by PERS, or 600 hours or more in a position covered by another **public** retirement system.



For further information about the Retirement Service Purchase Program, contact Public Employees Retirement Administration at 444-3154 or 1-877-275-7372.

Conclusion

In closing, here are a few more actions to consider:

- Communicate clearly, frequently, and honestly with your staff throughout the process.
- Define clear goals and objectives for the reduction in force.
- Implement all planned changes to business processes.
- Provide training to employees with new job responsibilities and functions.
- Revise job descriptions to reflect new responsibilities and functions, as well as, required skills, knowledge or ability.
- Reclassify job descriptions experiencing significant changes to predominate duties.
- Follow-up with employees, determine how they are processing the changes, allow them to express frustration, problem solve and be involved.

Contact your human resource officer or the State Human Resources Division for help or guidance.

We designed this guide to assist executive branch human resource professionals, supervisors, and managers in implementing a reduction in force. It is a companion to information contained in statute and policy.

We will provide alternative accessible formats of this Guide on request. If you need an alternative format, please contact the State Human Resources Division, Department of Administration, 125 N. Roberts St., PO BOX 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call through the Montana Relay Service at 711.